

§ 11.90

(i) The ability of the injured resources to recover over the recovery period should be estimated. This estimate includes estimates of natural recovery rates as well as recovery rates that reflect management actions or resource acquisitions to achieve restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(ii) A recovery rate should be selected for this analysis that is based upon cost-effective management actions or resource acquisitions, including a "No Action-Natural Recovery" alternative. After the recovery rate is estimated, compensable value should be estimated.

(iii) The rate at which the uses of the injured resources and their services will be restored through the restoration or replacement of the services should be estimated. This rate may be discontinuous, that is, no uses are restored until all, or some threshold level, of the services are restored, or continuous, that is, restoration or replacement of uses will be a function of the level and rate of restoration or replacement of the services. Where practicable, the supply of and demand for the restored services should be analyzed, rather than assuming that the services will be utilized at their full capacity at each period of time in the analysis. Compensable value should be discounted using the rate described in paragraph (e)(2) of this section. This estimate is the expected present value of uses obtained through restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(iv) The uses of the resource that would have occurred in the absence of the discharge or release should be estimated. This estimate should be done in accordance with the procedures in § 11.72 of this part. These uses should be estimated over the same time period using the same discount rate as that specified in paragraph (e)(2) of this section. This amount is the expected present value of uses forgone.

(v) Subtraction of the present value of uses obtained through restoration or replacement from the expected present value of uses forgone gives the amount of compensation that may be included, if positive, in a measure of damages.

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(h) *Scope of the analysis.* (1) The authorized official must determine the scope of the analysis in order to estimate compensable value.

(2) In assessments where the scope of analysis is Federal, only the compensable value to the Nation as a whole should be counted.

(3) In assessments where the scope of analysis is at the State level, only the compensable value to the State should be counted.

(4) In assessments where the scope of analysis is at the tribal level, only the compensable value to the tribe should be counted.

[51 FR 27725, Aug. 1, 1986, as amended at 53 FR 5176, Feb. 22, 1988; 59 FR 14286, Mar. 25, 1994]

Subpart F—Post-Assessment Phase

§ 11.90 What documentation must the authorized official prepare after completing the assessment?

(a) At the conclusion of an assessment, the authorized official must prepare a Report of Assessment that consists of the Preassessment Screen Determination, the Assessment Plan, and the information specified in paragraphs (b) and (c) of this section as applicable.

(b) When the authorized official has used a type A procedure, the Report of Assessment must include the information specified in subpart D.

(c) When the authorized official has used type B procedures, the Report of Assessment must include all documentation supporting the determinations required in the Injury Determination phase, the Quantification phase, and the Damage Determination phase, and specifically including the test results of any and all methodologies performed in these phases. The preliminary estimate of damages shall be included in the Report of Assessment. The Restoration and Compensation Determination Plan, along with comments received during the public review of that Plan and responses to those comments, shall also be included in the Report of Assessment.

[51 FR 27725, Aug. 1, 1986, as amended at 59 FR 14287, Mar. 25, 1994; 61 FR 20612, May 7, 1996]